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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 16

COMMONWEALTH OF VIRGINIA, PETITIONER,

vs.

IMPERIAL COAL SALES COMPANY, INCORPORATED

WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA

PETITION FOR CERTIORARI FILED APRIL 2, 1934.

CERTIORARI GRANTED MAY 7, 1934.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

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IMPERIAL COAL SALES COMPANY, INCORPORATED.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

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IN SUPREME COURT OF APPEALS OF VIRGINIA, AT RICHMOND

COMMONWEALTH OF VIRGINIA, Petitioner,

vs.

IMPERIAL COAL SALES CO., INC., Respondent

PETITION FOR WRIT OF ERROR

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Appeals of Virginia:

Your petitioner, the Commonwealth of Virginia, acting herein by the State Tax Commissioner, who is the proper officer designated by law to represent her herein, respectfully shows unto this honorable court that she is aggrieved by a judgment of the Circuit Court of the City of Lynchburg entered on the 29th day of January, 1932, whereby the Imperial Coal Sales Company, Incorporated, was exonerated from the payment of State taxes, aggregating $1,579.69 (R., 7) upon the capital of said corporation, and $158.34 on account of income received by said corporation (R., 7 & 56) to which order and judgment the Commonwealth duly excepted, as appears from the certificate of the Circuit Court duly executed on the 29th day of February, 1932 (R., 58).

Statement of the Case

There was considerable evidence taken which is not now considered material and, by reason of the stipulation of counsel, (R., 11), the case can be briefly stated as follows:

A capital tax, for the tax assessment years of 1928, 1929 and 1930, aggregating $1,579.69, and an income tax of [fol. 2] $158.34 on account of income received in 1930, were assessed by the Department of Taxation against the Imperial Coal Sales Company, Incorporated (hereinafter referred to as respondent), and it applied to the Circuit Court of the City of Lynchburg for a correction of the assessment, which was ordered to be granted.

The respondent is now and has been for some years engaged in the business of selling coal, under written contracts with West Virginia mines, said contracts being in the form as set out in evidence (R., 23-28), to consumers under other written contracts usually in the form which is likewise introduced in evidence (R., 30-33). The coal is not in Virginia at the time of sale and practically all of the coal is sold to consumers outside of Virginia.

The respondent is a Virginia corporation with its principal office in Lynchburg, Virginia, where are kept all the orders and books of account (R., 37), and bank accounts (R., 45); and from its Lynchburg office invoices, payable at Lynchburg, are sent out (R., 45); checks are drawn by the respondent on the Lynchburg bank account (R., 45, 46, 47).

With this explanation of the nature of the business, this court's special attention is respectfully directed to the stipulation (R., 11), which is as follows:

"It is stipulated by counsel for the parties in the trial of this case, that the property constituting the basis of the assessment on capital were on the dates in question the property of the Imperial Coal Sales Company, Inc., and that the income constituting the basis of the income assessment was income earned by the Imperial Coal Sales Company, Inc., and that the assessments as made are correct if the Imperial Coal Sales Company, Inc., is subject to any capital or income tax whatever during the years in question by the State of Virginia."

Opinion of Lower Court

The opinion of the lower court (R., 56), is so short and sets out the issue so clearly that it is quoted in full, as follows:

"By the Court: Gentlemen, I have listened very carefully to the evidence and argument in this case, and I realize the great importance, both to the Commonwealth and to the Defendant. It does seem fo me, however, getting back [fol. 3] to the fundamental principles, that the State has no power to tax or burden interstate commerce, and believing it to be true from the evidence in this case, that there is no business done by this corporation except interstate

commerce business, the Court feels obliged to conclude that the taxes attempted to be imposed by the State of Virginia both on the income and on the capital of this corporation are invalid, therefore, the relief will be granted as asked for."

Assignments of Error.

I

The court erred in holding that the assessment of the tax upon capital was invalid.

II

The court erred in holding that the assessment of the tax upon net income was invalid.

III

The court erred in holding that the Imperial Coal Sales Company, Incorporated, was exonerated from the payment of the assessments of taxes.

These three assignments are so correlated that it is convenient to argue them all together.

Question of Law

The only question of law which can now be considered by this court is the one raised by the opinion (R., 56), and final order of the court (R., 6). Upon reading these it is seen that the question is:

Does the State tax upon capital and the State tax upon net income, or either of them, constitute a burden upon interstate commerce in violation of the United States Constitution?

The other questions raised by the respondent in its particulars of its claims (R., 7-9), were all decided adversely to it, or at least considered immaterial, without any men- [fol. 4] tion being made thereof, and no exception has been taken by the respondent to the order of the court. Hence, this court is not called upon to consider them.

Principle Contended for by the Commonwealth

The fact that a corporation is engaged in interstate commerce does not, under Clause 3, Section 8 of the Constitu-